REMARKS

Claims 101-132 and 134-142 are pending in the application.

In the Response to Arguments section of the Office Action the Examiner argues that Applicant's previously argued distinction was not positively recited in the claims. Applicant disagrees. The Examiner argues that the "determination of the 'future value' of landscape objects (plants) based on the cost of the plant itself and the cost to install the plant" is not positively recited in the claims. However, Applicant's claims do positively recite such limitation. Claim 101 clearly claims: "A system for valuing landscape architectures, the system comprising…a processor…the processor including logic configured to determine a future value associated with the landscape architectural object based on a material cost associated with the landscape architectural object and an installation cost associated with an installing of the landscape architectural object." Claim 142 likewise is directed to "A computer readable medium containing a computer program for valuing landscape architectures, wherein the computer program comprises executable instructions for …. determining a future value associated with the landscape architectural object based on at least one of the material cost associated with the landscape architectural object and the installation cost associated with an installing of the landscape architectural object."

Claims 101, 103-132 and 134-142 stand rejected under 35 U.S.C. 112, first paragraph as not being enabled. Applicant respectfully traverses, and previously amended the claim to clarify that the recited "growth rate" is an estimated growth rate as opposed to a measured, precise growth rate. It is respectfully submitted that persons of ordinary skill in the horticultural art

know how to estimate the growth rate of a landscape object. Applicant would be pleased to submit a § 1.132 Declaration establishing the same at the Examiner's request.

Claims 101, 103-107, 109-132, 134-137, and 139-142 stand rejected under 35 U.S.C. 103(a) over Guide For Plant Appraisal ("GPA") in view of Sklarz et al. U.S. Patent Application Publication 2002/0087389 ("Sklarz") and further in view of Yuyama et al. U.S. Patent No. 7,366,679. Claim 108 stands rejected under 35 U.S.C. 103(a) as being unpatentable over the GPA reference in view of Sklarz and further in view of Yuyama et al. U.S. Patent No. 7,366,679, and still further in view of Modern Real Estate Practice by Galaty et al. ("Galaty"). Claim 138 stands rejected under 35 U.S.C. 103(a) as being unpatentable over the GPA reference in view of Sklarz and further in view of Yuyama et al. U.S. Patent No. 7,366,679, and still further in view of Tani et al. Japan Publication JP 2002288433 ("Tani"). These rejections are respectfully traversed for the reasons set forth in detail below.

With respect to claim 101, none of the cited references teach or suggest a processor that includes logic pertaining to future values and growth rates. Therefore, amended claim 101 is distinguished from the cited references. Applicants respectfully assert that claim 101 and its dependants are patentable, and that the § 103 obviousness rejections must be withdrawn.

Applicants, respectfully disagree with the Examiner's characterization of the GPA reference vis-à-vis the present invention. The present invention relates to the determination of the "future value" of landscape objects (plants) based on the cost of the plant itself and the cost to install the plant. In certain embodiments, the future value is determined by using the plants growth rate and the resulting increased size. Such a system uses individual growth rates and local growing conditions to determine the increased size of an existing plant. Then, based on the resulting size of the plant, average costs are considered in determining the replacement cost value of the plant assessed.

The GPA reference fails to teach or suggest the incorporation of plant growth estimates into a future valuation formula. In addition, the GPA reference fails to disclose the incorporation of environmental conditions to affect a future value of a plant. The GPA reference, as titled (Guide For Plant Appraisal), is intended as a plant appraisal instructional document. It is used typically by independent contractors who perform "appraisals" which are conducted for tax, insurance, and/or legal claims with regard to a damaging event. The entire reference focuses on appraising the *current* condition and value of landscapes after a damaging event.

In that respect, the GPA reference describes the methodology of evaluate a landscape before damage occurs and then reconsidering the landscape in the "after" condition in order to evaluate the loss of value. *See* Page 95 second paragraph. The damage is assessed and the landscape is evaluated to determine the cost of repairing or replacing the damaged landscape. The calculated cost is a present cost because it represents the valuation of the landscape, and/or of the damages, on the day of appraisal. In other words, it is the cost of the lost that would be required to compensate the owner today. This value determination is not a future valuation because it does not determine the cost of replacing the landscape sometime in the future. Thus, the GPA reference only describes the determination of the *present* value of landscapes after a damaging event. The cited reference, as a whole, fails to teach or suggest its application to determining a *future* value associated with existing landscape objects.

The present invention is further distinguished because the system creates a standardized criteria, values, and methodologies that enable a new asset class to be created. The asset class is used to offer products/services which were never envisioned by the authors of the GPA reference, the Council of Tree & Landscape Appraisers (CTLA), or their affiliated arborist clientele. Among those products is a comprehensive insurance offering based on current and future values. Therefore, Applicants believe that such a system for valuing landscape to

determine the future value of existing landscape is not obvious to one of ordinary skill in the art.

The Examiner has asserted that the GPA reference teaches determining future values of landscape objects using historical prices and recent sales on pages 96-97. However, those pages explicitly state that the cost and market approach discussed may be used to evaluate the damages and to compare value. This is a determination of the present value under the current conditions of the landscape. The cited pages fail to teach or suggest a determination of future values of landscapes.

Applicants reassert their arguments that while the GPA reference discloses, at pages 128-129, a method for determining a compounding cost for plants, this is not a future value but rather a present cost to compensate a owner today of a lost (large) plant that cannot be replaced with one of the same size. Such cost rolls up the current replacement cost of a smaller plant being installed with estimated maintenance costs and interest expense over a derived period of time. The calculated cost is a present cost, and not a future value. The formula disclosed in the GPA reference does not provide a future replacement cost value on an existing tree. Rather, it uses a financial instrument and estimate of annual costs to inflate the price of a smaller plant.

The GPA reference fails to teach or suggest the positively recited limitation of a future value associated with the landscape architectural object. The other cited references do nothing to cure this failure. The newly cited Yuyama reference does not relate to the field of landscape architecture management, and it is respectfully submitted that that reference is not within the same field of endeavor as the present invention. It is further submitted that it would not be obvious to a person of ordinary skill in the art to combine the Yuyama reference with the GPA reference, and that any such combination would be inoperable. It would be further non-obvious to take the teachings of the GPA reference, modify them with the teachings of the Yuyuma reference, and then take the modified result and further modify it with specific teachings from

the Sklarz reference to yield the invention of independent claims 101 and 142.

It is well established that, in order to show obviousness, all limitations must be taught or suggested by the prior art. In Re Royka, 180 U.S.P.Q. 580, 490 F.2d 981 (CCPA 1974); MPEP § 2143.03. It is error to ignore specific limitations distinguishing over the references. In Re Boe, 184 U.S.P.Q. 38, 505 F.2d 1297 (CCPA 1974); In Re Saether, 181 U.S.P.Q. 36, 492 F.2d 849 (CCPA 1974); In Re Glass, 176 U.S.P.Q. 489, 472 F.2d 1388 (CCPA 1973). Because independent claims 101 and 142 recite a limitation not taught or suggested by the prior art, Applicants assert that those claims, and their dependent claims 103-132 and 134-141, are patentable. It is respectfully submitted that the § 103 obviousness rejections must be withdrawn.

CONCLUSION

In view of the above amendments and remarks, Applicants respectfully request a Notice of Allowance. Additional characteristics or arguments may exist that distinguish the claims over the references cited by the Examiner, and Applicants respectfully preserve their right to present these in the future, should they be necessary. If the Examiner believes a telephone conference would advance the prosecution of this application, the Examiner is invited to telephone the undersigned at the below-listed telephone number.

This constitutes a request for any needed extension of time under 37 C.F.R. § 1.136(a) and an authorization to charge all fees therefore to deposit account No. **50-2638** if not otherwise specifically requested.

The Commissioner is hereby authorized to charge any required fees not included, or any deficiency of fees submitted herewith, or credit any overpayment to Deposit Account No. **50-2638**.

Respectfully submitted,

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